

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES. See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24.

FILED BY CLERK
MAR -5 2009
COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

)	2 CA-JV 2008-0122
)	DEPARTMENT A
)	
IN RE ANTHONY C.)	<u>MEMORANDUM DECISION</u>
)	Not for Publication
)	Rule 28, Rules of Civil
)	Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. 16257303

Honorable Virginia C. Kelly, Judge

AFFIRMED

Barbara LaWall, Pima County Attorney
By Ellen R. Brown

Tucson
Attorneys for State

Robert J. Hirsh, Pima County Public Defender
By Susan C. L. Kelly

Tucson
Attorneys for Minor

P E L A N D E R, Chief Judge.

¶1 Appellant Anthony C. was adjudicated delinquent in February 2008, and the juvenile court placed him on probation for six months. The state filed a petition to revoke probation in September 2008, a few days before Anthony’s probation was due to expire. After Anthony admitted he had used marijuana and failed to submit verification that he had

completed court-ordered community service, the court terminated his probation as unsuccessful. On appeal, Anthony asks that we vacate that order.

¶2 A juvenile court has broad discretion in determining the proper disposition of a delinquent juvenile. *In re Maricopa County Juv. Action No. JV-510312*, 183 Ariz. 116, 118, 901 P.2d 464, 466 (App. 1995). It is “within the court’s authority pursuant to Rule 31(D), Ariz. R. P. Juv. Ct.,” to terminate a juvenile’s probation and designate that termination as unsuccessful. *In re Themika M.*, 206 Ariz. 553, ¶ 6, 81 P.3d 344, 345 (App. 2003). We will not disturb a juvenile court’s disposition order absent an abuse of discretion. *Id.* ¶ 5. We find no abuse here.

¶3 Anthony argues the juvenile court’s ruling was improper because “all issues complained of in the Petition to Revoke, filed just three . . . days before the natural termination of his previously ordered six . . . month term of probation . . . had been remedied by the time of the [d]isposition hearing.” But the issue before us is whether the court properly terminated Anthony’s probation as unsuccessful, not whether he had in the interim arguably remedied the violations upon which the court based its ruling. Anthony also suggests that, because the court could have continued or modified his probation, its decision instead to terminate it as unsuccessful somehow constituted an abuse of discretion.

¶4 The record establishes that, in July 2008, the juvenile court conducted a hearing at the request of Anthony’s probation officer, Wanda Payne, who had been unable to contact Anthony since April 2008. Anthony appeared at the hearing with his mother and counsel, and the court ordered him to take a drug test that day; he tested positive for marijuana then

and again in September. Anthony subsequently admitted two of the three violations alleged in the state's petition to revoke probation, the voluntariness of which he does not challenge on appeal. In the probation revocation report, which the juvenile court noted it had considered at the disposition hearing, Payne reported that a recent search of Anthony's bedroom had yielded a large butcher knife in the closet and a four-inch lock blade and some marijuana in the pocket of a pair of pants found on his floor, all in violation of the conditions of Anthony's probation. Although Anthony's mother told the judge at the disposition hearing that the knives and marijuana did not belong to her son, the judge appeared unpersuaded, commenting that whoever had left the items in Anthony's room "was awfully careless."

¶5 Payne testified at the disposition hearing that Anthony had been doing well in school, had recently completed his previously unfinished community-service obligation, and had successfully completed counseling. But she concluded he had been unsuccessful on probation "[i]n terms of . . . doing drugs" and pointed out that, despite his attorney's characterization of his positive drug test in July as "no big deal," it was nonetheless a positive test. Both Payne and the state recommended that Anthony be placed in detention briefly, but the state argued that Anthony's probation could not be terminated as successful "because he ha[d]n't successfully completed the conditions of probation." Although Anthony disagrees with the state's suggestion on appeal that he did not regularly attend school and counseling, he can hardly argue that he had fully complied with the conditions of his probation in light of his unchallenged admissions that he had not.

¶6 Notably, now-fifteen-year-old Anthony has a lengthy history of failing to comply with probation conditions in previous delinquency matters, as evidenced by the state’s having filed the first of many petitions to revoke probation when he was twelve years old. The juvenile court presumably considered Anthony’s history, which was summarized in the revocation report, and also asked defense counsel to “address why having weapons in his room and not reporting for months at a time would not make it impossible for a Court to successfully terminate him [from probation].” Relying on Anthony’s admissions that he had used marijuana while on probation and had failed to submit verification of community service, the juvenile court found:

That’s enough . . . for the Court to find that the minor . . . can’t be successfully terminated from probation. That’s just not a success. . . . So I’m going to unsuccessfully terminate the minor from probation.

Anthony[,] you’ve done some things real well, but you dropped the ball on other things and came pretty late to the table. . . . [A]fter considering all of the explanations for everything that I heard today, I’m not going to enter any additional consequence for the minor in terms of time in detention. But[,] Anthony[,] that’s not because I’m persuaded that you don’t deserve it. It’s just that I think at this point the unsuccessful termination is enough of a burden for you to carry

¶7 Anthony also contends the juvenile court’s ruling was “tantamount to a punishment” because it will prevent him from having his adjudication set aside or his juvenile record destroyed when he turns eighteen. *See* A.R.S. §§ 8-348(C)(3); 8-349(B)(4), (C)(5). As the state pointed out in its answering brief, we previously addressed this very argument in *Themika M.*:

Regardless of whether the juvenile court terminated Themika's probation as unsuccessful or simply terminated her probation, the underlying reality is that Themika neither complied with nor successfully completed the terms and conditions of her standard probation. The consequences for that noncompliance have been legislatively determined and will follow independently of the juvenile court's characterizing the termination as unsuccessful at the time of disposition. Unless the legislature amends §§ 8-348 and 8-349 to provide otherwise, Themika will indeed suffer detrimental future consequences. But she will incur those consequences as the result of her failure to abide by the conditions of her probation, not as the result of the juvenile court's essentially stating the obvious by accurately describing her performance on probation as unsuccessful.

Themika M., 206 Ariz. 553, ¶ 15, 81 P.3d at 347. Those observations are equally applicable here.

¶8 Because there is ample evidence in the record to support the juvenile court's order terminating Anthony's probation as unsuccessful, we affirm that order.

JOHN PELANDER, Chief Judge

CONCURRING:

JOSEPH W. HOWARD, Presiding Judge

PHILIP G. ESPINOSA, Judge